

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

IN RE:)	
)	
TOMMY DEWAYNE DOBSON, and)	Chapter 11
ANNE CHRISTINE DOBSON,)	Case No. 23-60148
)	
<u>Debtors.</u>)	
)	
GERARD R. VETTER,)	
Acting United States Trustee For Region Four,)	
)	
Movant,)	
)	
v.)	
)	
TOMMY DEWAYNE DOBSON, and)	
ANNE CHRISTINE DOBSON,)	
)	
<u>Respondents.</u>)	

MOTION TO CONVERT CASE

Comes now Gerard R. Vetter, Acting United States Trustee for Region Four (the “**United States Trustee**”),¹ by counsel, and moves the Court pursuant to 11 U.S.C. §§ 105 and 1112 (11 U.S.C. § 101 *et seq.* being the “**Bankruptcy Code**”) to convert the above-referenced Debtors’ case to chapter 7 of the Bankruptcy Code. In support of this motion, the United States Trustee respectfully states as follows:

Jurisdiction and Venue

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334, and the statutory predicates for this motion are §§ 105 and 1112 of the Bankruptcy Code.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Gerard R. Vetter has succeeded John P. Fitzgerald, III and serves as the Acting United States Trustee for Region 4.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Background

4. Tommy D. Dobson (“**Mr. Dobson**”) and Anne Christine Dobson (“**Mrs. Dobson**”) (collectively, the “**Debtors**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 7, 2023. On their petition, the Debtors indicated their desire to proceed under subchapter V of chapter 11. The following day, Mr. Dobson caused Dobson Homes, Inc. (“**DHI**”) to commence case number 23-60158 via the filing of a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

5. On February 9, 2023, the Court entered its *Debtor-In-Possession Order* [Docket No. 8] (the “**DIP Order**”) requiring the Debtors to “follow all guidelines, regulations and directives of the Office of the United States Trustee pertaining to Chapter 11 cases. . . .”

6. On February 9, 2023, an agent of the United States Trustee sent Debtors’ counsel the guidelines attached as Exhibit 1 (the “**Guidelines**”). The Guidelines informed the Debtors of the requirement that “the [Debtors] must pay all post-petition debts on a current basis.” The Guidelines also require the Debtors to file monthly operating reports, which reports are signed under penalty of perjury.

7. Also on February 9, 2023, the Court entered its order [Docket No. 9] (the “**Escrow Order**”) requiring the Debtors, “[w]ithin 30 days of the petition date and continuing monthly thereafter[,]” to “remit \$1,000.00” to their counsel to hold in trust for the benefit of their subchapter V trustee (the “**Escrow Payment**”). The Escrow Order is incorporated by reference.

8. On February 15, 2023, an agent of the United States Trustee conducted an initial debtor interview of the Debtors. At the outset of the interview, the agent informed the Debtors:

The United States Trustee is required by law to monitor the financial performance of chapter 11 debtors and to ensure the debtors otherwise comply with applicable

provisions of the Bankruptcy Code. This is done primarily through an on-going financial review of the debtor's business activities with a particular emphasis on whether or not the debtor is remaining current with their post-petition, being the debts you incur now that you've filed, post-petition obligations and whether the reorganization of the debtor's business is feasible.

* * *

And then employing professionals such as Mr. Cox or, maybe, a CPA – those things will require court approval . . . and then payments to professionals require court approval.

* * *

During the interview, Mr. Dobson also acknowledged that his prepetition arrest precipitated the filing of this case. During the interview, the Debtors' subchapter V trustee advised the Debtors that they would be required to make the Escrow Payments beginning 30 days after their petition date, and he advised them that he "just want[ed] you to be able to prepare for that and know that it's another little thing you can trip up on, and, and again if, if you're going to have trouble meeting that order requirement, pick up the phone and call Mr. Cox. . . ."²

9. The Debtors should have made Escrow Payments on or before March 9, 2023, April 9, 2023, June 9, 2023, and July 9, 2023.

10. According to the documents attached to proof of claim #45 filed in this case, Atlantic Union Bank holds a claim secured by the Debtors' residence. The monthly payment due to Atlantic Union Bank is \$1,897.00 (the "**AUB Payment**"), and it appears to be due on the last day of each month. Proof of claim #45 is incorporated by reference.

11. On March 23, 2023, the Debtors filed their February operating report [Docket No. 38], which report is incorporated by reference. Mrs. Dobson signed the operating report under

² As of the filing of this motion, the recording of the initial debtor interview has not been transcribed by a court reporter. Quotes in this motion from the initial debtor interview are believed to be accurate, but inconsistencies may appear between the quotes in this motion and any transcripts later prepared as a result of, for example, differences in interpretation of words or how pauses in speaking should be interpreted in the transcription process.

penalty of perjury, which report states that the Debtors paid all their bills on time. The Debtors did not attach an Exhibit E to the report, and the instructions for part 3 of the operating report state, “[a]ttach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.”

12. The Debtors did not make the AUB Payment in February.

13. On April 24, 2023, the Debtors filed their March operating report [Docket No. 62], which report is incorporated by reference. Mrs. Dobson signed the operating report under penalty of perjury, which report states that the Debtors paid all their bills on time. The Debtors did not attach an Exhibit E to the report.

14. Contrary to the March operating report, the Debtors failed to timely pay all their debts including, but not limited to, the Escrow Payment³ and the AUB Payment.⁴

15. On May 24, 2023, the Debtors filed their April operating report [Docket No. 81], which report is incorporated by reference. Mrs. Dobson signed the operating report under penalty of perjury, which report states that the Debtors paid all their bills on time. The Debtors did not attach an Exhibit E to the report.

16. Contrary to the April operating report, the Debtors failed to timely pay all their debts including, but not limited to, the AUB Payment.

17. On June 22, 2023, the Debtors filed their May operating report [Docket No. 94],

³ The bank statement attached to the April 2023 operating report filed on May 24, 2023, indicates Debtors’ counsel deposited a check for \$2,000.00 on April 10, 2023.

⁴ The Debtors disclosed the non-payment of the AUB Payment on their plan filed June 2, 2023. According to the June 2, 2023, plan, the post-petition arrearages totaled \$7,588.00.

which report is incorporated by reference. Mrs. Dobson signed the operating report under penalty of perjury, which report states that the Debtors paid all their bills on time. The Debtors did not attach an Exhibit E to the report.

18. Contrary to the May operating report, the Debtors failed to timely pay all their debts including, but not limited to, the Escrow Payment and AUB Payment.

19. In addition, although the United States Trustee is unable to discern how many health insurance premium payments the Debtors have failed to timely make, it appears the Debtors have failed to timely make all post-petition health insurance premium payments.

20. Upon information and belief, the Debtors failed to pay the Escrow Payment due on or before July 9, 2023.

21. After obtaining an extension of time to file the balance of their schedules, on February 28, 2023, the Debtors filed schedules, statements, and other documents in support of their petition [Docket No. 27] (**“Balance of Schedules”**). The Balance of Schedules filed by the Debtors are incorporated by reference.

22. The Balance of Schedules contained certain inaccuracies. By way of example and not in limitation, the Balance of Schedules: did not disclose on Schedule E/F the claim of Atlantic Union Bank evidenced by proof of claim #45;⁵ did not disclose on the Statement of Financial Affairs Mr. Dobson’s or Mrs. Dobson’s interests in Dobson & Associates, LLC and Dobson Services, Inc.;⁶ and did not disclose on the Statement of Financial Affairs the criminal prosecution

⁵ By email dated May 19, 2023, at 3:37 p.m. Debtors’ counsel stated an intention to file amended schedules the week of May 22, 2023.

⁶ By email dated April 13, 2023, at 5:10 p.m. Debtors’ counsel stated an intention to file certain amended documents by the week of April 17, 2023, to “show these on the SOFA and Schedule A/ B[.]”

of Mr. Dobson for construction fraud pending in the Charlottesville, Virginia General District Court.⁷

23. Though made aware of certain errors in the Balance of Schedules, the Debtors did not promptly file amendments.

24. On June 26, 2023, the Debtors filed certain amended schedules and statements to address non-disclosures related to Dobson & Associates, LLC, Dobson Services, Inc., and the pending criminal charges.

25. The Debtors listed two priority unsecured creditors and 15 general unsecured creditors on their schedules as having “Unknown” claim amounts.

26. In total, the Debtors listed 33 of the 119 general unsecured creditors on their schedules as having contingent or⁸ unliquidated claims.

27. On March 6, 2023, the Debtors appeared and testified at their meeting of creditors held in this case. At that time, Mr. Dobson testified he expected to have reconciliations completed in a “month or two[.]”

28. During the meeting of creditors, Mr. Dobson indicated certain professional persons were assisting in the creation of reconciliations. DHI is in chapter 7 and no longer operating. It appears the professionals are performing the services for and at the request of the Debtors.

29. No application has been filed to employ an accountant or other financial professional in this case. Meanwhile, the proof of claim filed by the IRS asserts an estimated claim of \$173,397.41, and it appears the claim is estimated because certain necessary returns have not

⁷ In addition to discussion of the criminal charges at the initial debtor interview, a creditor’s attorney elicited testimony from Mr. Dobson regarding pending criminal charges at the meeting of creditors conducted in this case on March 6, 2023.

⁸ As used in this motion, “or” is not exclusive.

been filed.

30. The Debtors filed a request for an extension to file their 2022 income tax returns.

31. According to their 2021 income tax returns, the Debtors claimed refunds totaling \$43,926.00.

32. On June 2, 2023, the Debtors filed their original plan.

33. On June 8, 2023, the United States Trustee filed an objection to the confirmation of the plan [Docket No. 91]. The objection is incorporated by reference. The same day the United States Trustee issued the discovery requests attached as Exhibit 2. The discovery sought, primarily, the information relied upon by the Debtors to support the means of implementing the plan. Taking into account three days for mailing (Fed. R. Bankr. P. 9006(f)), responses to the discovery were due on or before July 11, 2023. Subsequently, the Debtors requested an extension to July 19, 2023, to respond to the discovery and the United States Trustee agreed to the request.

34. The Debtors filed an amended plan on July 9, 2023, and the deadline to object is August 10, 2023. Though the Debtors filed an amended plan, the parties agreed the Debtors would produce documents responsive to the discovery issued in connection with the original plan. The Debtors provided the United States Trustee with responses to the discovery on July 20, 2023. There are certain inconsistencies between the documents produced and the projections attached to the amended plan. By way of example and not in limitation, the budget attached to the amended plan filed on July 9, 2023, showed the Debtors receiving rent from “Corner Stone” in the amount of \$2,975.00, but the documents produced by the Debtors show they deposited a \$2,625.00 check for “June Payment Office Space Rent” and a check for \$350.00 for “June Payment Office Utilities – Electric, Sewer, Gas & Water” on July 12, 2023. Alarming, the Debtors produced no written agreements underpinning the asserted projected income streams.

Basis For Relief

35. The Court may enter any order necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a).

36. The United States Trustee may raise and be heard on any issue. 11 U.S.C. § 307.

37. Section 1112 applies to cases under subchapter V of chapter 11. *See* 11 U.S.C. 1181. With the statutorily defined exceptions contained in 11 U.S.C. §§ 1112(b)(2) and (c), on request of a party in interest, the Court must convert or dismiss a chapter 11 case for cause unless it determines that the appointment of a trustee is “in the best interests of creditors and the estate.” 11 U.S.C. § Section 1112(b)(1). Cause includes, but is not limited to:

- “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;”
- “gross mismanagement of the estate;” and
- “failure to comply with an order of the court;” and
- “failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any)[.]”

11 U.S.C. § 1112(b)(4)(A), (B), (E), and (H). Additionally, chapter 11 debtors are fiduciaries for their creditors, and cause also includes failures to satisfy such fiduciary duties. *In re Johnson*, 2016 Bankr. LEXIS 1937 *19 (Bankr. M.D. Tenn. May 5, 2016) (collecting cases).

38. Cause exists to convert the case. By way of example and not in limitation:

- The Debtors have not been able to satisfy their financial obligations post-petition, and it appears unlikely they will be able to put their finances back in good condition as they continue to live beyond their means and have not made serious efforts during this case to tighten their financial belt;

- The Debtors also appear to be mismanaging the estate by failing to seek the employment of professionals that would enable them to, for example, file their tax returns and, possibly, determine certain liabilities and potentially offset some of the potentially large priority tax liabilities. Rather, it appears they have had accounting professionals working on other matters without seeking court approval;
- The Debtors have repeatedly violated the Escrow Order;
- The Debtors have repeatedly filed operating reports signed under penalty of perjury that contain inaccurate information and obfuscate their true financial condition;
- The Debtors appear unwilling to satisfy their fiduciary duties. Rather, the Debtors have been less than forthcoming regarding their financial affairs and matters affecting such affairs, filed a speculative plan on June 2, 2023, projecting a rosy outlook while failing to disclose pertinent information such as, but not limited to, their inability to even timely pay the Escrow Payment, failed to timely produce reasonably requested information related to the Debtors' ability to fund a plan, filed an amended plan containing inaccurate information in the supporting financial projection, and appear to be generally unwilling to propose to pay back to their creditors what they might be able to if they acted in their creditors' best interests; and
- The Debtors' failure to timely pay health insurance premiums puts the estate at risk in the event such policy is cancelled due to nonpayment of a premium and either of the Debtors gets seriously hurt or sick.

WHEREFORE the United States Trustee respectfully requests that the case be converted to chapter 7 and for such other and further relief as the Court may deem proper.

Date: July 21, 2023

Respectfully submitted,
United States Trustee
By: /s/ W. Joel Charboneau

NOTICE OF HEARING

Please take notice that the United States Trustee has filed a motion for relief under 11 U.S.C. § 1112(b)(1) and unless an order is entered resolving the motion prior to the hearing, a hearing will be held on **September 18, 2023, beginning at 10:00 a.m. in the United States Bankruptcy Court located in Charlottesville, Virginia at 255 W. Main Street.**

CERTIFICATE OF SERVICE

I certify that on July 21, 2023, I electronically filed the foregoing motion and notice of hearing with the United States Bankruptcy Court for the Western District of Virginia, and I caused a copy to be provided to BMC Group, Inc.⁹ for service by first class mail to the entities on the attached Service List.

/s/ W. Joel Charboneau

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⁹ The United States Trustee Program has contracted with BMC Group, Inc. to provide noticing services for pleadings filed by United States Trustee Program personnel.

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SUNBELT RENTALS
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ATLANTA, GA 30384-9211

SYLVIA BAILEY
4303 RAGGED VIEW CT.
CHARLOTTESVILLE, VA 22903

T & A DRYWALL
2495 PONDEROSA TRAIL
CHARLOTTESVILLE, VA 22903

T & N PRINTING
205 12TH STREET NE
CHARLOTTESVILLE, VA 22902

T-MOBILE
c/o AMERICAN INFOSOURCE
PO BOX 248848
OKLAHOMA CITY, OK 73124

T-MOBILE
c/o AMERICAN INFOSOURCE
4515 N SANTA FE AVE
OKLAHOMA CITY OK 73118

TC2 DESIGN, INC.
261 OAK PARK ROAD SUITE 201
MADISON, VA 22727

THE HAIRSTON GROUP LLC
PO BOX 1084
HARRISONBURG VA 22803

THE LUCHAIR COMPANY
261 THORNROSE AVENUE
STAUNTON, VA 24401

THE SHERWIN WILLIAMS CO
341 TOWNCENTER LANE SUITE 100
CHARLOTTESVILLE, VA 22911-5618

THE SHERWIN WILLIAMS CO
c/o SOLODAR & SOLODAR
4825 RADFORD AVE STE 201
RICHMOND VA 23230

THOMAS MARSH
76 WINDY ACRES LOOP
AFTON VA 22920

TIGER FUEL COMPANY
P.O. BOX 1607
CHARLOTTESVILLE, VA 22902

TOM & LIZ ROLLO
400 CITY WALK WAY, APT 408
CHARLOTTESVILLE VA 22902

TROYS AUTO & DIESEL
100 SHADWELL HEIGHTS RD
CHARLOTTESVILLE VA 22911

TRUIST BANK
214 N TYSON ST
CHARLOTTE NC 28202

UNION BANK & TRUST
3643 S 48TH LINCOLN ST
LINCOLN, NE 68506

U.S. SMALL BUSINESS ADMINISTRATION
CORPORATION SERVICE COMPANY
801 ADLAI STEVENSON DRIVE
SPRINGFIELD, IL 62703

UVA MEDICAL CENTER
PO BOX 743977
ATLANTA GA 30374

UVA PHYSICIANS GROUP
PO BOX 743977
ATLANTA GA 30374

VA DEPARTMENT OF TAXATION
ATTN: BANKRUPTCY
PO BOX 2156
RICHMOND, VA 23218

VAN DER LINDE RECYCLING
820 HYDRAULIC RD, STE 1
CHARLOTTESVILLE VA 22901

VAN DER LINDE CRANE
3073 CRAIGS STORE RD
AFTON VA 22920

VERIZON WIRELESS
500 TECHNOLOGY DR
WELDON SPRING, MO 63304

VIRGINIA ASPHALT SERVS
499 BURCHS CREED RD
CROZET VA 22932

VIRGINIA CONTRACTORS SUPPLY
9106 OWENS DRIVE
MANASSAS, VA 20111

WAKEFIELD LAW
881 HARRISON ST SE
LEESBURG VA 20175

WELLS FARGO
435 FORD RD, STE. 300
ST LOUIS PARK MN 55426

WELLS FARGO
MAX F8234F-02F
PO BOX 10438
DES MOINES, IA 50306

WHITE CAP, LP
PO BOX 4852
ORLANDO, FL 32802-4852

WILMINGTON TRUST
c/o NEWREZ LLC
d/b/a SHELLPOINT MORTGAGE
PO BOX 10826
GREENVILLE SC 29603

WILSON READY MIX
PO BOX 1347
HARRISONBURG, VA 22803-1347

WITMER'S BOOM PUMPING LLC
188 COFFMAN ROAD
WEYERS CAVE, VA 24486

WITMER'S CONCRETE PUMPING LLC
188 COFFMAN ROAD
WEYERS CAVE, VA 24486

YAN L. CHAN
792 S VILLIER CT
VIRGINIA BEACH, VA 23451